

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pacific Bell Telephone Company (U-1001-C),

Complainant,

vs.

Mpower Communications Corp. (U-5859-C),

Defendant.

Case 03-10-045
(Filed October 22, 2003)

**ADMINISTRATIVE LAW JUDGE'S RULING
REGARDING PREHEARING CONFERENCE**

Prehearing Conference

A prehearing conference (PHC) in this proceeding has been set for December 15, 2003 at 10:00 a.m., in the Commission's Courtroom, State Building 505 Van Ness Avenue, San Francisco, CA 94102.

Requirement to Meet and Confer

Complainant Pacific Bell Telephone Company dba SBC California (SBC California) alleges that defendant Mpower Communications Corp. (Mpower) has refused, since May 2002, to pay a \$16.52 monthly recurring charge for the Expanded Interconnection Service Cross Connect for each DS-1 Unbundled Network Element loop ordered from SBC California and connected to Mpower's collated facilities. Mpower denies that it owes SBC California the monthly recurring charge, and further denies that it has materially breached the SBC California-Mpower interconnection agreement.

SBC California states that based on its preliminary analysis an evidentiary hearing on this matter is not necessary, and Mpower concurs in its answer. Both parties have reserved the right to reassess and alter their initial evaluations.

Review of the complaint and answer suggests that the factual disagreements between the parties might be limited in number and may be of the kind reducible to a stipulation of fact after discovery. By telephone, both parties have indicated that a couple of the seeming discrepancies in the pleadings are actually the result of typographical errors in the complaint. SBC California has sought and received leave to file correcting errata. To the extent that the central issues at dispute are matters of law, the parties can brief such issues and it is unnecessary to hold an evidentiary hearing to resolve them.

So that we may best utilize the time of the PHC, prior to the hearing the parties should meet and confer and be prepared to discuss: (1) whether there are any factual matters at issue; (2) if so, what those issues are; (3) whether there is a need for discovery; and (4) if evidentiary hearings are not needed, whether the parties can agree on a proposed schedule for the filing of concurrent opening and reply briefs.

The PHC will take place in Commission Courtroom C. Counsel for Defendant Mpower will appear by telephone, and should call in at the scheduled time to phone number (415) 703-2012.

IT IS RULED that:

1. A prehearing conference (PHC) will be held on the date and at the time and place indicated herein.
2. Prior to the PHC, the parties shall meet and confer as directed above.
3. At the PHC, the parties shall be prepared to informally address the matters raised above and in the pleadings, as well as discuss a proposed procedural schedule.

Dated December 5, 2003, at San Francisco, California.

/s/ JACQUELINE A. REED

Jacqueline A. Reed
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Prehearing Conference on all parties of record in this proceeding or their attorneys of record.

Dated December 5, 2003, at San Francisco, California.

/s/ JANET V. ALVIAR

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.